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April 5, 2017

VIA ELECTRONIC DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation
GN Docket No. 14-177; IB Docket No. 15-256; RM-11664; WT Docket No. 10-112; IB Docket No. 97-95

Dear Ms. Dortch:

On Monday, April 3, 2017, representatives of Nextlink Wireless, LLC ("Nextlink") met with Erin McGrath, Legal Advisor to Commissioner Michael O'Rielly and Daudeline Meme, Legal Advisor to Commissioner Mignon Clyburn, to discuss Nextlink's Petition for Reconsideration or, in the Alternative, Clarification of the FCC's *Report and Order*, and comments and reply comments in response to the FCC's *Further Notice of Proposed Rulemaking* in the above-referenced proceedings.[1] Attending the meeting on behalf of Nextlink were: Lisa Youngers, Nextlink's Chief Executive Officer, Eric Miller, Nextlink's Chief Technology Officer and Kaete Demro, Director, Legal and Regulatory (by phone); Michele Farquhar and Tom Peters of Hogan Lovells US LLP, counsel and advisor to Nextlink, respectively; and Mike Lasky of Widelity, Inc., consultant to Nextlink.

Nextlink focused on three issues in its meetings: (1) performance requirements for Upper Microwave Flexible Use ("UMFU") and LMDS band licenses; (2) allocating the remaining portions of the LMDS band for UMFU service; and (3) satellite sharing issues in the A1 band portion of the 28 GHz band.

Performance Requirements for LMDS Band Licenses

Nextlink explained that the June 2024 performance deadline for incumbent UMFU licensees is too onerous and may deter development of mobile technology.[2] As Nextlink has previously noted, standards for 5G are unlikely to become available until 2020 or 2021.[3] Meanwhile, the state of the

[1] *See* Comments of Nextlink Wireless, LLC, GN Docket No. 14-177, *et al*. (filed Sept. 30, 2016) ("FNPRM Comments"); Reply Comments of Nextlink Wireless, LLC, GN Docket No. 14-177, *et al*. (filed Oct. 31, 2016) ("FNPRM Reply Comments"); Petition for Reconsideration or, in the Alternative, Clarification of Nextlink Wireless, LLC, GN Docket No. 14-177, *et al*. (filed Dec. 14, 2016) ("Pet. for Recon.").

[2] *See* FNPRM Reply Comments at 18; Pet. for Recon. at 8-11.

[3] *See* Pet. for Recon. at 8-9.

art of several components of 5G technology, including beamforming and antenna form factor, must advance significantly for next-generation mobile networks to become viable. Extending incumbent licensees' performance deadlines will not give them any advantage over new UMFU licensees because these new county-based licenses will require significant construction by incumbents and new licensees alike. The FCC can provide relief to incumbent licensees—and ensure greater collaboration among all UMFU licensees—by aligning their performance deadlines with the same deadlines set for new licensees following an UMFU spectrum auction. As noted below, Nextlink also urged the FCC to adopt a uniform performance deadline for all UMFU licenses as well as the remaining portions of the LMDS band, regardless of whether the remaining portions of the LMDS band are allocated for UMFU service, given the ongoing interrelated aspects of the LMDS band.

Nextlink further noted that population-based performance metrics are inappropriate for tribal, state and federal lands.[4] Nextlink encouraged the FCC to follow the precedent it set when it adopted service rules for the 700 MHz Band and carve-out these areas from performance requirements.[5] In addition, Nextlink reviewed the disadvantages of adopting untested "use-or-share" rules for the LMDS spectrum as well as performance benchmarks based on "actual use" of 5G service.[6]

Allocating the Remaining Portions of the LMDS Band for UMFU Service

Nextlink urged the FCC to adopt flexible use rules for the LMDS A2 and A3 bands and B block to align the whole LMDS band for flexible use service.

Several commenters agree that the A3 band and B block are suitable candidates for flexible use rules.[7] Importantly, the record shows that 5G can be deployed over bandwidths smaller than the 500 megahertz threshold the FCC has proposed for identifying new millimeter-wave bands for flexible use.[8] Manufacturers currently producing LMDS equipment can include the entire LMDS band into a single integrated radio at marginal costs.[9] And exclusion zones are sufficient to protect the limited number of Radio Astronomy Service sites operating in the 31.3-31.8 GHz band.[10] Nextlink recounted that some service providers use combined segments of the band to provide point-to-point and point-to-multipoint service and that not including the full LMDS band under Part 30 will lead to regulatory confusion and stranded band segments.

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[4] *See* FNPRM Comments at 29-30; Pet. for Recon. at 6-7.

[5] *See* FNPRM Comments at 29, n.83 (*citing Serv. Rules for the 698-746, 747-762 & 777-792 MHz Bands Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Sys. Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones Biennial Regulatory Review -- Amendment of Parts 1, 22, 24, 27, & 90 to Streamline & Harmonize Various Rules Affecting Wireless Radio Servs. Former Nextel Commc'ns*, Second Report and Order, 22 FCC Rcd. 15289, 15350 ¶ 160 (2007)).

[6] *See* FNPRM Comments at 20-28; FNPRM Reply Comments at 20-26.

[7] *See* FNPM Reply Comments at 5-6 (citations omitted).

[8] *See, e.g.*, Comments of Ericsson Inc., GN Docket No. 14-177, *et al*. at 37 (filed Jan. 15, 2015).

[9] *See* Comments of XO Communications, LLC, GN Docket No. 14-177, *et al*. at 11-16 (filed Jan. 28, 2016); Reply Comments of XO Communications, LLC, GN Docket No. 14-177, *et al*. at 4-6 (filed Feb. 26, 2016).

[10] *See* FNPRM Reply Comments at 11-13.

Similarly, the FCC should include the A2 band in its UMFU service rules. The LMDS band works together as a whole, and applying a piecemeal licensing and operating scheme to the band will harm the A2 band's utility. Nextlink presented the attached diagram to illustrate that, under the 28 GHz European band plan, the A2 spectrum pairs with an equally sized uplink block in the A1 band. The European band plan's configuration guarantees that equipment will be available that can support next-generation fixed use cases that involve both the A1 and the A2 bands. Current LMDS use cases are expected to play a major role in moving toward future 5G deployments, and separating the A1 and A2 bands will eliminate existing deployment scenarios and stifle new deployments. Nextlink would continue to protect incumbent feeder link operations in the A2 band once the FCC allocated the spectrum for UMFU service.

Not adopting uniform mobile service rules for the remaining portions of the LMDS band will orphan this spectrum and potentially create regulatory confusion regarding performance requirements throughout the current LMDS band. Likewise, new UMFU licensees will be deprived of the economies of scale from technology suitable for the full LMDS band, and the remaining A2 and A3 band and B block licenses could languish in the FCC's spectrum inventory. Therefore, Nextlink urged the FCC to allocate the remaining portions of the LMDS band for UMFU service and to adopt a single, unified performance deadline for the entire band (even if the remaining band segments are not allocated for UMFU service).

Satellite Sharing Issues in the A1 Band of the 28 GHz Band

Finally, Nextlink addressed recent calls from the satellite industry to create *de facto* primary rights in the 28 GHz band.[11] Nextlink explained that the FCC's existing rules adequately protect FSS operators and provide sufficient access to spectrum in the band—where FSS is a secondary service. The satellite industry's various petitions for reconsideration and their latest proposal to change the rules for accessing the 28 GHz band will undermine 5G deployments and are contrary to the FCC's longstanding secondary market policies. Nextlink urged the FCC to maintain existing limits on FSS earth station operations in transient population areas, to keep its limit of three FSS earth stations per county for the 28 GHz band and to reject the tiered-access approach proposed for the 70, 80 and 90 GHz bands for UMFU bands.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this letter electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

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Partner

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[11] *See, e.g.*, *Ex Parte* Letter from EchoStar Satellite Operating Corp. and Hughes Network Sys., LLC, Inmarsat, Inc., SES Americom, Inc., O3b Limited, Intelsat Corp. and The Boeing Co. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177, *et al*. (filed Mar. 28, 2017).

Enclosure
cc (via email):

Erin McGrath
Daudeline Meme

27.5-29.5 GHz Band Plan for Europe and U.S.